

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

GEORGIA SOUTHWESTERN
RAILROAD, INC., a Corporation,

Plaintiff,

VS.

AMERICUS C. MITCHELL, JR.,
an Individual,

Defendant.

CASE NO. 2:06cv3-B

ANSWER

NOW COMES **AMERICUS C. MITCHELL, JR.**, an individual, defendant herein, by and through his attorneys, and answers the respective paragraphs of the plaintiff's complaint as follows:

I.

1. Admitted on information and belief.
2. Admitted.

II.

3. Denied. This defendant admits, on information and belief, that Plaintiff Georgia Southwestern Railroad, Inc. is incorporated in the State of Delaware and has its principal place of business in San Antonio, Texas. Defendant further admits that he is an individual and a resident of Barbour County, Alabama. This defendant denies that venue is proper in the Northern Division of the Middle District of Alabama; rather, says that the

proper venue in this action is the Eastern Division of the Middle District of Alabama. This defendant admits that the parties are diverse.

4. This defendant admits that the Court has amount in controversy jurisdiction.

III.

5. Denied.

6. Denied.

COUNT I

7. This defendant adopts and incorporates by reference his responses to Paragraphs 1 through 6 as though fully set out herein in letters and numbers.

8. Denied.

9. Denied.

10. Denied.

COUNT II

11. This defendant adopts and incorporates by reference his responses to Paragraphs 1 through 10 as though fully set out herein in letters and numbers.

12. Denied.

13. Denied.

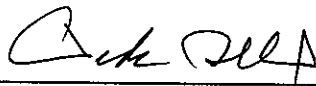
14. Denied.

15. Denied.


16. Denied.

ADDITIONAL DEFENSES

1. Not guilty.
2. This defendant says that on the occasion made the basis of this suit, the plaintiff, Georgia Southwestern Railroad, Inc., a corporation, was guilty of or chargeable with negligence which proximately contributed to the injuries and damages alleged in the complaint and/or that said plaintiff knowingly assumed the risk of loss; hence, the plaintiff is not entitled to recover from this defendant.
3. This defendant says that the damages alleged by the plaintiff were due to acts, errors or omissions of others, which events constitute the cause in fact of the plaintiff's damages, which damages were not caused in whole or in part by any act, error or omission of this defendant.
4. This defendant denies any and all liability and/or allegations of wrongdoing, but says that between any act, error or omission allegedly committed by this defendant, there occurred an efficient intervening cause which constitutes the cause in fact of the plaintiff's damages; hence, the plaintiff is not entitled to recover hereunder.
5. This defendant says that the plaintiff failed to mitigate its damages.



DAVID E. ALLRED



D. CRAIG ALLRED
Attorneys for Above-Named Defendant

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CERTIFICATE OF SERVICE

I hereby certify that I have this 19th day of January, 2006 filed the foregoing *Answer* with the Clerk of the Court for the United States District Court for the Middle District of Alabama, Northern Division, using the CM/ECF system, which will send notification of such filing to:

Adrian D. Johnson, Esq.
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OF COUNSEL